

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ABU DHABI COMMERCIAL BANK, et al.,	:	Civil Action No. 1:08-cv-07508
Individually and On Behalf of All Others	:	
Similarly Situated,	:	<u>CLASS ACTION</u>
	:	
Plaintiffs,	:	MEMORANDUM IN SUPPORT OF
	:	MOTION FOR A LETTER OF REQUEST
vs.	:	FOR INTERNATIONAL JUDICIAL
	:	ASSISTANCE TO OBTAIN EVIDENCE
MORGAN STANLEY & CO.	:	FROM KPMG LLP TO BE USED IN A
INCORPORATED, et al.,	:	CIVIL PROCEEDING PURSUANT TO THE
	:	HAGUE CONVENTION
Defendants.	:	
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Abu Dhabi Commercial Bank, King County, Washington and SEI Investments Company (“plaintiffs”) respectfully submit this Memorandum in Support of Motion for a Letter of Request for International Judicial Assistance to Obtain Evidence from KPMG LLP to Be Used in a Civil Proceeding Pursuant to the Hague Convention, an important non-party witness located in London, England.

## **I. BACKGROUND**

This is a civil proceeding in which plaintiffs bring claims against defendants for common law fraud.

This action arises from the collapse of a structured investment vehicle composed of risky asset-backed securities, Cheyne Finance PLC (“Cheyne SIV” or the “Issuer”), managed by Cheyne Capital Management Limited and then Cheyne Capital Management (UK) LLP (“Cheyne”). Defendants Standard & Poor’s Rating Services and The McGraw-Hill Companies, Inc. (collectively, “McGraw-Hill”), along with defendants Moody’s Investor Service, Inc. and Moody’s Investor Service Ltd. (collectively, “Moody’s”), are credit rating agencies (the “Rating Agencies”) that provide credit ratings on financial instruments. The Rating Agencies, together with Cheyne and Morgan Stanley & Co. Incorporated and Morgan Stanley & Co. International Limited (collectively, “Morgan Stanley”), which acted as Arranger and Placement Agent for the Rated Notes (defined below), stamped the Cheyne SIV with high credit ratings despite knowing the Cheyne SIV was filed with toxic, low-quality assets.

The Cheyne SIV used investor money to purchase various asset-backed securities, and sold interests in the Cheyne SIV in the form of Commercial Paper and Medium Term Notes (“Senior Notes”), Mezzanine Capital Notes and Combination Notes (collectively, the “Rated Notes”), along

with unrated Junior Capital Notes. Because defendants knew the Cheyne SIV was filed with low-quality assets, the high credit ratings on the Rated Notes were knowingly false when issued.

In August 2007, the Cheyne SIV collapsed and entered into receivership in the United Kingdom. From the beginning of the Cheyne SIV's development and launch period in 2004 through its collapse in October 2007 (the "Class Period"), KPMG LLP served as the auditor for the Cheyne SIV. The value of plaintiffs' investments was negatively affected as a result of the Cheyne SIV's collapse and subsequent restructuring.

## **II. ARGUMENT**

KPMG LLP has documents in its possession relevant to plaintiffs' claims. During the Class Period, KPMG LLP performed quarterly reviews and audits on the Cheyne SIV's financial statements. Moreover, KPMG LLP performed certain procedures agreed upon with defendants on the Cheyne SIV's capital model. KPMG LLP conducted its audit work with the Cheyne SIV in accordance with the International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board. Under those standards, KPMG LLP was required to examine and gather information relevant to the amounts and items discussed in the Cheyne SIV's financial statements. Additionally, to complete its work, KPMG LLP would have had extensive discussions with Cheyne SIV's management and other relevant parties who were involved in preparing the Cheyne SIV's financial statements.

Given its role as auditor of the Cheyne SIV, KPMG LLP should have documents in its possession central to addressing plaintiffs' claims in this action concerning the value and quality of the assets held by the Cheyne SIV during the Class Period. As part of its work, KPMG LLP should have had access to and would have reviewed the Cheyne SIV's documentation with respect to its asset portfolio and structure. KPMG LLP also would have information concerning the restructuring

of the Cheyne SIV. This information is highly relevant to the matters at issue in this litigation, and it will further the interest of justice if these documents are produced by KPMG LLP.

This Court has the authority to issue a letter of request pursuant to 28 U.S.C. §1781 and the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, *opened for signature* March 18, 1970, 23 U.S.T. 2555, 847 U.N.T.S. 231. KPMG LLP is not available for deposition in this county, and thus the issuance of a letter of request is necessary to secure the power to depose KPMG LLP and to compel it to produce the requested documents and other papers.

For these reasons, plaintiffs respectfully request that the Motion for a Letter of Request for International Judicial Assistance to Obtain Evidence from KPMG LLP to Be Used in a Civil Proceeding Pursuant to the Hague Convention be granted and the Court sign and have the Clerk affix the seal of the Court to the letter of request directed to KPMG LLP, seeking documentary and, if necessary, testimonial, evidence at a place agreed to by the parties prior thereto.

DATED: July 12, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2010, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 12, 2010.

s/ DANIEL S. DROSMAN  
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